

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



PALOMAR COMMUNITY COLLEGE )  
DISTRICT, )  
 )  
Employer, ) Case No. LA-R-980  
 )  
and ) Request for Judicial Review  
 ) PERB Decision No. 947  
PALOMAR COLLEGE FACULTY )  
ASSOCIATION/CCA/CTA/NEA, ) PERB Order No. JR-14  
 )  
Employee Organization. ) September 4, 1992  
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Appearances: Littler, Mendelson, Fastiff & Tichy, by Richard J. Currier, Attorney, for Palomar Community College District; Rothner, Segall & Bahan, by Glenn Rothner, Attorney, for Palomar College Faculty Association/CCA/CTA/NEA.

Before Hesse, Chairperson; Caffrey and Carlyle, Members.

DECISION

CAFFREY, Member: This case is before the Public Employment Relations Board (PERB or Board) on request of the Palomar Community College District (District) for PERB to join in seeking judicial review of Palomar Community College District (1992) PERB Decision No. 947.

In PERB Decision No. 947, the Board adopted as its own decision the regional director's findings with regard to formation of a bargaining unit comprised of faculty within the District. The Board found that many of the District's department chairpersons and directors are not supervisors and, therefore, are properly included in the proposed bargaining unit.

DISTRICT'S REQUEST

The District cites five reasons in its request for judicial review: (1) inclusion of department chairpersons and directors

in the bargaining unit will require the District to "dramatically change its organization"; (2) the relationship of Educational Employment Relations Act (EERA) section 3540.1(m)<sup>1</sup> and Education Code section 87610.1(e),<sup>2</sup> interpreted in PERB Decision No. 947, will impact all community college districts; (3) the issue of

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<sup>1</sup>**EERA** is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. EERA section 3540.1(m) states:

"Supervisory employee" means any employee, regardless of job description, having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively recommend such action, if, in connection with the foregoing functions, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

<sup>2</sup>Education Code section 87610.1(e) states:

Any employees who are primarily engaged in faculty or other bargaining unit duties, who perform "supervisory" or "management" duties incidental to their performance of primary professional duties shall not be deemed supervisory or managerial employees as those terms are defined in Section 3540.1 of the Government Code, because of those duties. These duties include, but are not limited to, serving on hiring, selection, promotion, evaluation, budget development, and affirmative action committees, and making effective recommendations in connection with these activities. These employees whose duties are substantially similar to those of their fellow bargaining unit members shall not be considered supervisory or management employees.

**whether** department chairpersons and directors should be excluded **from** the bargaining unit because of their supervision of classified employees merits judicial review; (4) **whether** department chairpersons and directors serve as supervisors of **adjunct** faculty merits judicial review; and (5) **whether** department chairpersons and directors are members of the **bargaining** unit also merits judicial review.

#### DISCUSSION

EERA section 3542(a) describes the right to judicial review.

**It states, in pertinent part:**

No employer or employee organization shall **have** the right to judicial review of a unit determination except: (1) when the board in response to a petition from an employer or employee organization, agrees that the case is one of special importance and joins in the request for such review; or (2) when the issue is raised as a defense to an unfair practice complaint.

It is within the Board's sole discretion to determine **whether** a case is "one of special importance." PERB Regulation 32500(c)<sup>3</sup> states:

The Board may join in a request for judicial review or may decline to join, at its discretion.

**The** Board has applied a relatively strict standard in reviewing requests for judicial review and evaluating **whether** cases are "of special importance." The Board has not agreed that

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<sup>3</sup>PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

the mere fact that a court has not ruled on an issue meets the "special importance" test, stating that "such would be an abdication of our responsibility to interpret the statute which we enforce and would tend to render this Board simply another administrative hurdle to be cleared on the way to unit certification." Livermore Valley Joint Unified School District (1981) PERB Order No. JR-9. The Board has further noted that its "considerable discretion in the determination of appropriate units is demonstrated by the very limited circumstances under which judicial review of its unit decisions may be obtained." San Diego Unified School District (1981) PERB Order No. JR-10.

Where a request for judicial review has been granted, the issue "was found to be of special importance because: (1) it was a novel issue; (2) primarily involving construction of a statutory provision unique to EERA; and (3) was likely to arise frequently." Los Angeles Unified School District (1985) PERB Order No. JR-13.

The District has failed to meet this standard in its request for judicial review of PERB Decision No. 947.

The issue of whether department chairpersons and directors should be included in a bargaining unit is not novel. It involves the application of the relevant code sections to the factual circumstances present, and has been considered by the Board on several occasions as cited in PERB Decision No. 947. Similarly, the decision in this case turns on the factual

evidence concerning the duties and responsibilities of the department chairpersons and directors, rather than primarily involving the interpretation of a provision of EERA. The impact of the Board decision on District operations, and the relationship of department chairpersons and directors to classified employees and/or adjunct faculty in the District are important issues with regard to the operation of the District. They are not, however, issues of special importance within the meaning of EERA section 3542(a). Essentially, the District's arguments in these areas address issues of fact and factual interpretation upon which PERB Decision No. 947 is based. They do not meet the standard necessary to justify approval of the request for judicial review.

The interpretation of Education Code section 87610.1(e) included in PERB Decision No. 947 also does not present an issue of special importance justifying judicial review. The Board utilized its construction of the Ralph C. Dills Act section 3513(g),<sup>4</sup> which contains language similar to Education

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<sup>4</sup>Ralph C. Dills Act is codified at Government Code section 3512 et seq. Section 3513(g) states:

"Supervisory employee" means any individual, regardless of the job description or title, having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend this action, if, in connection with the foregoing, the exercise of this authority is not of a merely routine or clerical nature,

Code section 87610.1(e) in interpreting that section and its relation to EERA section 3540.1(m). The mere fact that the Board has not previously interpreted this section does not justify a request for judicial review. To conclude otherwise would be to strip the Board of its status as the expert administrative agency in representation issues.

Finally, the role of the concept of collegiality in determining whether department chairpersons and directors are supervisory employees is not of special importance. It represents one of the considerations in what is essentially a fact-based determination of the supervisory or non-supervisory status of the District's department chairpersons and directors in this case.

ORDER

Based upon the foregoing reasons, it is hereby ORDERED that the request for judicial review of Palomar Community College District (1992) PERB Decision No. 947 is DENIED. The PERB regional director is ORDERED to proceed with the election proceeding consistent with PERB Decision No. 947.

Chairperson Hesse and Member Carlyle joined in this Decision.

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but requires the use of independent judgment. Employees whose duties are substantially similar to those of their subordinates shall not be considered to be supervisory employees.